

25.703

(i) Agency name, complete mailing address, and point of contact name, telephone number, and email address;

(ii) Offeror's name, complete mailing address, and point of contact name, telephone number, and email address;

(iii) Description/nature of product or service;

(iv) The total cost and length of the contract;

(v) Justification, with market research demonstrating that no other offeror can provide the product or service and stating why the product or service must be procured from this offeror, as well as why it is in the national interest for the President to waive the prohibition on contracting with this offeror that conducts restricted business operations in Sudan, including consideration of foreign policy aspects identified in consultation(s) pursuant to 25.702-4(b);

(vi) Documentation regarding the offeror's past performance and integrity (see the Past Performance Information Retrieval System including the Federal Awardee Performance Information and Integrity System at <http://www.ppirs.gov> and any other relevant information);

(vii) Information regarding the offeror's relationship or connection with other firms that conduct prohibited business operations in Sudan; and

(viii) Any humanitarian efforts engaged in by the offeror, the human rights impact of doing business with the offeror for which the waiver is requested, and the extent of the offeror's business operations in Sudan.

(d) The consultation in 25.702-4(b) and the information in 25.702-4(c)(3) will be considered in determining whether to recommend that the President waive the requirement of subsection 25.702-2. In accordance with section 6(c) of the Sudan Accountability and Divestment Act of 2007, OFPP will semiannually submit a report to Congress, on April 15th and October 15th, on the waivers granted.

[73 FR 33638, June 12, 2008, as amended at 76 FR 68038, Nov. 2, 2011]

48 CFR Ch. 1 (10-1-13 Edition)

25.703 Prohibition on contracting with entities that engage in certain activities or transactions relating to Iran.

25.703-1 Definitions.

As used in this section—

Person—

(1) Means—

(i) A natural person;

(ii) A corporation, business association, partnership, society, trust, financial institution, insurer, underwriter, guarantor, and any other business organization, any other nongovernmental entity, organization, or group, and any governmental entity operating as a business enterprise; and

(iii) Any successor to any entity described in paragraph (1)(ii) of this definition; and

(2) Does not include a government or governmental entity that is not operating as a business enterprise.

Sensitive technology—

(1) Means hardware, software, telecommunications equipment, or any other technology that is to be used specifically—

(i) To restrict the free flow of unbiased information in Iran; or

(ii) To disrupt, monitor, or otherwise restrict speech of the people of Iran; and

(2) Does not include information or informational materials the export of which the President does not have the authority to regulate or prohibit pursuant to section 203(b)(3) of the International Emergency Economic Powers Act (50 U.S.C. 1702(b)(3)).

[75 FR 60256, Sept. 29, 2010, as amended at 76 FR 68030, Nov. 2, 2011; 77 FR 23368, Apr. 18, 2012]

25.703-2 Iran Sanctions Act.

(a) *Certification*—(1) *Certification relating to activities described in section 5 of the Iran Sanctions Act.* As required by section 6(b)(1)(A) of the Iran Sanctions Act (50 U.S.C. 1701 note), unless an exception applies in accordance with paragraph (c) of this subsection, or a waiver is granted in accordance with 25.703-4, each offeror must certify that the offeror, and any person owned or controlled by the offeror, does not engage in any activity for which sanctions may be imposed under section 5

Federal Acquisition Regulation

25.703-4

of the Iran Sanctions Act. Such activities, which are described in detail in section 5 of the Iran Sanctions Act, relate to the energy sector of Iran and development by Iran of weapons of mass destruction or other military capabilities.

(2) *Certification relating to transactions with Iran's Revolutionary Guard Corps.* As required by section 6(b)(1)(B) of the Iran Sanctions Act (50 U.S.C. 1701 note), unless an exception applies in accordance with paragraph (c) of this subsection, or a waiver is granted in accordance with 25.703-4, each offeror must certify that the offeror, and any person owned or controlled by the offeror, does not knowingly engage in any significant transaction (*i.e.*, a transaction that exceeds \$3,000) with Iran's Revolutionary Guard Corps or any of its officials, agents, or affiliates, the property and interests in property of which are blocked pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*) (see OFAC's Specially Designated Nationals and Blocked Persons List at <http://www.treasury.gov/ofac/downloads/t11s1dn.pdf>).

(b) *Remedies.* Upon the determination of a false certification under paragraph (a) of this subsection, the agency shall take one or more of the following actions:

(1) The contracting officer terminates the contract in accordance with procedures in part 49, or for commercial items, see 12.403.

(2) The suspending official suspends the contractor in accordance with the procedures in subpart 9.4.

(3) The debarring official debars the contractor for a period of at least two years in accordance with the procedures in subpart 9.4.

(c) *Exception for trade agreements.* The certification requirements of paragraph (a) of this subsection do not apply if the acquisition is subject to trade agreements and the offeror certifies that all the offered products are designated country end products or designated country construction material (see subpart 25.4).

[77 FR 73519, Dec. 10, 2012]

25.703-3 Prohibition on contracting with entities that export sensitive technology to Iran.

(a) The head of an executive agency may not enter into or extend a contract for the procurement of goods or services with a person that exports certain sensitive technology to Iran, as determined by the President and listed in the System for Award Management Exclusions via <http://www.acquisition.gov> (22 U.S.C. 8515).

(b) Each offeror must represent that it does not export any sensitive technology to the government of Iran or any entities or individuals owned or controlled by, or acting on behalf or at the direction of, the government of Iran.

(c) *Exception for trade agreements.* The representation requirement of paragraph (b) of this subsection does not apply if the acquisition is subject to trade agreements and the offeror certifies that all the offered products are designated country end products or designated country construction material (see subpart 25.4).

[76 FR 68031, Nov. 2, 2011, as amended at 77 FR 188, Jan. 3, 2012; 77 FR 73519, Dec. 10, 2012; 78 FR 37679, June 21, 2013; 78 FR 46783, Aug. 1, 2013]

25.703-4 Waiver.

(a) An agency or contractor seeking a waiver of the requirements of 25.703-2 or 25.703-3, consistent with section 6(b)(5) of the Iran Sanctions Act or 22 U.S.C. 8551(b), respectively, and the Presidential Memorandum of September 23, 2010 (75 FR 67025), shall submit the request to the Office of Federal Procurement Policy, allowing sufficient time for review and approval.

(b) Agencies may request a waiver on an individual or class basis; however, waivers are not indefinite and can be cancelled, if warranted.

(1) A class waiver may be requested only when the class of supplies or equipment is not available from any other source and it is in the national interest.

(2) Prior to submitting the waiver request, the request must be reviewed and cleared by the agency head.

(c) In general, all waiver requests should include the following information: